

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

PUBLIC HEARING:  
HAZARDOUS WASTE FACILITY  
PERMITTING CRITERIA

Cal/EPA HEADQUARTERS BUILDING  
1001 "I" STREET  
BYRON SHER AUDITORIUM  
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 6, 2017  
9:30 A.M.

A P P E A R A N C E SHearing Officer

Rizgar Ghazi

DTSC Staff

Evelia Rodriguez

Colleen Heck

Corey Yep

Public Speakers

James Specht  
Department of Defense  
United States Air Force Civil Engineer Center  
Legislative and Regulatory Engagement Division, Western  
Branch

David Bell  
Department of Defense  
United States Air Force Civil Engineer Center  
Legislative and Regulatory Engagement Division, Western  
Branch

Randal Friedman  
Navy Region Southwest

Chuck White  
Manatt, Phelps & Phillips  
*representing* Chemical Waste Management

Janet Whittick  
California Council for Environmental and Economic Balance

Tom Jacob  
Chemical Industry Council of California

Louinda Lacey  
California Chamber of Commerce

Chris Mowrer  
Clean Harbors

A P P E A R A N C E SPublic Speakers (continued)

Bradley Angel  
Green Action for Health and Environmental Justice

Maricela Mares-Alatorre  
People for Clean Air & Water of Kettleman City

Ingrid Brostrom  
Center on Race, Poverty & the Environment

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PROCEEDINGS

HEARING OFFICER GHAZI: Okay, let's get started again. I want to read over the housekeeping portion of the presentation. Again, my name is Rizgar Ghazi, I am the Deputy Director for the Hazardous Waste Management Program with the Department of Toxic Substances Control.

For the record, today is November 6, 2017, it's 10:00 a.m. I apologize for the telecommunication issues. We are restarting again in this room. This is the Sierra Room right? The Byron Sher Room. Please, if you are listening, please log off and log back on again to see the -- to hear the proceedings today.

Today's proceedings will be recorded and transcribed. The tape as well as any exhibits or evidence presented at this hearing will be incorporated into the rulemaking file and will be reviewed prior to the final approval of the regulations by the Department and the Office of Administrative Law. In addition, the audio recordings of this proceeding will be available at our website at [dtsc.ca.gov](http://dtsc.ca.gov).

The purpose of today's hearing is to accept oral and written public comments which will be part of the official rulemaking files for these regulations. Witnesses presenting oral testimony at the hearing will not be sworn in, nor will we engage in cross-examination of the

1 witnesses. You may present written comments to us today.  
2 Comments made today will not be responded to at this time  
3 but will be addressed in writing in the Final Statement of  
4 Reasons for this rulemaking. We ask that you restrict your  
5 comments to the regulations being considered today.

6 In addition to the comments received today,  
7 additional written comments will be accepted up until  
8 midnight today, November 6, 2017. After the close of the  
9 hearing you may submit additional written comments on the  
10 proposed regulations through any of the several methods as  
11 long as you do so by 12:00 midnight tonight.

12 So here are the different ways you can submit  
13 written comments:

14 You may email them to [permits\\_hwm@dtsc.ca.gov](mailto:permits_hwm@dtsc.ca.gov).  
15 One more time, [permits\\_hwm@dtsc.ca.gov](mailto:permits_hwm@dtsc.ca.gov). Or mail them to  
16 Jackie Buttle, Buttle is spelled B-U-T-T-L-E, Office of  
17 Planning & Environmental Analysis, DTSC, PO Box 806,  
18 Sacramento, California, 95812. Mailed comments must be  
19 postmarked no later than today, November 6, 2017.

20 All of the methods for providing comments are  
21 provided in the public notice for these regulations. I'm  
22 sorry. The methods of providing comments are provided in  
23 the public comment notice of these regulations and they can  
24 be found -- they used to be in the back of the room but  
25 we'll move the equipment down here so you can have them.

1           If you wish to submit written comments during  
2 today's hearing you may do so at any time during the  
3 hearing. Please hand them to Evelia Rodriguez; Evelia sits  
4 on my right side.

5           With that, let's begin the hearing.

6           If you have comments, you want to speak, could you  
7 come to the podium, either the left or right side, either  
8 one.

9           MS. YEP: The first person is James Specht from  
10 Department of Defense.

11           MR. SPECHT: Once again thank you, ladies and  
12 gentlemen. My name is James Specht. I am with the Air  
13 Force Civil Engineer Center, Legislative and Regulatory  
14 Engagement Division, West Branch. The last name is spelled  
15 S-P-E-C-H-T.

16           The Department of Defense plans and executes all  
17 mission activities in a manner that ensures protection of  
18 human health and the environment to sustain indefinitely the  
19 resources required to support the readiness of our armed  
20 forces.

21           The DOD has more than 30 installations in  
22 California that all share the mission of supporting national  
23 defense. The accomplishment of this mission necessitates  
24 the generation of hazardous waste from myriad military  
25 processes.

1           The hazardous waste permit and the associated  
2     permitting process are both significant control mechanisms  
3     for ensuring that the regulated community manages waste in  
4     accordance with applicable laws and regulations.

5           There are seven DOD installations in California  
6     with active RCRA Part B or Subpart X permits and the need  
7     for a timely and efficient permit renewal process is  
8     critical to ensuring both compliant management of hazardous  
9     waste and continuation of the DOD mission.

10          The proposed changes to the permit renewal process  
11     present numerous obstacles for the DOD to obtain or renew  
12     our current permits and thus accomplish our mission. These  
13     changes include unilateral application of financial  
14     assurance requirements, permit review time lines and  
15     deadlines that are problematic for DOD given fiscal -- and  
16     the Federal Acquisition Regulations at 48 CFR, insufficient  
17     consideration given to positive past compliance history and  
18     self-reporting mechanisms and state stipulation of private  
19     vendors.

20          While the rule as written may be appropriate for  
21     initial permit applications with respect to the very complex  
22     health risk assessment process, the DOD is requesting the  
23     Department of Toxic Substances Control establish a  
24     streamlined permit process for renewal permit applications  
25     that indicate no significant changes in operation.



1           This streamlined process should give positive  
2 consideration for past performance and reward substantial  
3 compliance and inspection histories where DTSC identified  
4 few or no issues with a lighter assessment burden during  
5 permit renewal. This approach would not preclude DTSC from  
6 identifying additional requirements on a case-by-case basis  
7 if needed, such as addressing a valid concern identified in  
8 an appeal or petition.

9           We encourage the DTSC to consider our concerns  
10 regarding how this proposed rule affects the more than 30  
11 California DOD installations and their ability to continue  
12 operations in a manner protective of human health and the  
13 environment.

14           The DOD has submitted a comment letter to the  
15 DTSC, or will submit a comment letter, identifying these  
16 concerns and looks forward to working in partnership to  
17 create a regulation that ensures continuation of the DOD  
18 mission and the protection of human health and the  
19 environment.

20           Thank you for your time today and for allowing us  
21 to provide these comments and the statement.

22           HEARING OFFICER GHAZI: Thank you, Mr. Specht.

23           The next person is David Bell.

24           MR. BELL: Good morning, thank you. David Bell,  
25 the same office as Mr. Specht, Air Force Civil Engineer

1 Center, Legislative and Regulatory Engagement Division,  
2 Western Branch. My comments pertain to the entire  
3 regulation, mostly as that we, the Air Force, want to be  
4 protective of the environment, human health and the  
5 environment; we want to use the DTSC permitting process  
6 procedures.

7           However, you just heard there's many problematic  
8 areas of this new regulation that could cause some  
9 unintended consequences that we ask DTSC to consider in that  
10 for the Air Force we would strongly have to consider our  
11 hazardous waste operations at our facilities. This is on  
12 top of an ongoing permit renewal process that, at least to  
13 date, will probably cost us ten times more than our previous  
14 permit renewal process.

15           So again we ask you to look at these unintended  
16 consequences, mostly in that we would strongly have to  
17 consider closure and reversion to a generator status of our  
18 hazardous waste operations and ask you if this is best for  
19 California? Because under this type of operation one of the  
20 unintended consequences could be increased vehicular  
21 traffic, specifically truck traffic in and out of our  
22 installations through the neighborhoods that our  
23 installations are near or surrounded by.

24           Those are my comments, thanks.

25           HEARING OFFICER GHAZI: Thank you, Mr. Bell.

1           The next speaker is Mr. Randal Friedman.

2           MR. FRIEDMAN: Good morning, Randal Friedman, F-R-  
3 I-E-D, on behalf of Rear Admiral Lindsey who is the  
4 Commander, Navy Region Southwest and the Department of  
5 Defense Regional Environmental Coordinator.

6           I won't echo what the Air Force has already said;  
7 I want to talk instead about the perspective of why do we,  
8 the military and specifically the Navy, generate hazardous  
9 waste. Believe me, it's nothing we choose to do, it's  
10 nothing that we want to do, it's something we have to do.

11           And as an example I'll just consider our facility  
12 at China Lake, the Naval Weapons Air Station. It's 1.1  
13 million acres, the size of Rhode Island, in the High Desert.  
14 It is the premier location in the world for the research,  
15 development, test and evaluation of weapon systems. You all  
16 have seen the missiles on CNN, the weapons systems. Those  
17 all have gone through China Lake, not just for the testing  
18 of the actual missile but the propellants and the systems  
19 that go within them.

20           In the development of these weapons there is a lot  
21 of research that occurs in labs of new generations of  
22 propellants, new generations of explosives. I'm sure you  
23 can imagine they all don't work, they all don't research,  
24 they all have to be disposed of, they're highly dangerous.  
25 We have a facility in the middle of nowhere - I believe it's

1 seven miles to the nearest property boundary - where they  
2 are exploded. It requires a DTSC permit.

3           We have really no other option for that. We  
4 theoretically could put them on the public roads to some  
5 other facility, but frankly the highway patrol, the  
6 sheriffs, they don't want them on the roads, they want us to  
7 keep them on our facility. And we have very trained  
8 professionals, the same people who detonate explosives in  
9 Afghanistan and around the world, manage this facility. We  
10 really don't have a choice other than to not do the research  
11 there. And I would add that this is not just the Navy, this  
12 is all the military services; but it is also the Germans,  
13 the Japanese, the Australians, the British, this is an  
14 international facility. It is truly imperative for the  
15 national security of the world and of the United States'  
16 place in that world.

17           And it all is based on a DTSC permit. We take  
18 that permit very seriously, we work very hard to maintain  
19 the permit, to go through the procedures to get it renewed.  
20 I would echo what the Air Force had said, it's a pretty  
21 basic facility so we have been doing this for decades,  
22 there's really not a whole lot new that happens, it  
23 shouldn't really have to be a whole new permit application  
24 that takes multi-years and hundreds of thousands of dollars.

25           That is, I think, our biggest problem with this is

1 one, we don't have a choice. I know there's lots of people  
2 who would just like to think hazardous waste could go away.  
3 This is one situation where it simply can't and for us to  
4 continue to do our mission.

5 I would also just like to consider kind of what  
6 you could call the run-of-the-mill hazardous waste that the  
7 Air Force references. It's motor oil, it's transmission  
8 fluids, it's the stuff that -- we have a large fleet of  
9 vehicles, everyone in this room has vehicles. Just since I  
10 sometimes like considering numbers, if you think about an  
11 average automobile has six quarts of fluids in it, which is  
12 a low estimate, just in Los Angeles County the number of  
13 registered vehicles, you have at any given time the  
14 equivalent of a stack of 55 gallon drums, 93 miles tall just  
15 with the fluids in automobiles.

16 We as Californians and we as the military, need a  
17 place to dispose of those in an appropriate facility  
18 efficiently so that we can function and the state can  
19 function. This isn't exotic hazardous waste, most of what  
20 we do is not exotic hazardous waste but is vitally  
21 necessary.

22 And on this line one of the things that we have  
23 asked in our letter that we will be turning in is a  
24 reconsideration of the economic analysis that is done  
25 because we do not feel it was adequate, we do not feel it,

1 for example, considers the extensive role of the military in  
2 California's economy and the importance of both the national  
3 defense mission and our contribution to the economy.

4 And I will leave it at that with our comment  
5 letter, thank you.

6 HEARING OFFICER GHAZI: Thank you, Mr. Friedman.  
7 The next speaker is Chuck White.

8 MR. WHITE: Thank you very much. Good morning to  
9 everyone, Rizgar and others.

10 My name is Chuck White, I am with the law firm of  
11 Manatt, Phelps & Phillips; we are representing Chemical  
12 Waste Management, which is a wholly-owned subsidiary of  
13 Waste Management.

14 I really want to start by saying how disappointed  
15 we were and many others were when we saw these regulations.  
16 They are quite extensive, even though there are comments in  
17 the ISOR to the contrary, that will have really sweeping  
18 impacts on the delivery of hazardous waste management  
19 services in California.

20 Chemical Waste Management will be submitting - at  
21 last count there were 87 specific comments with legal and  
22 technical questions raised about the validity and accuracy  
23 and need for various provisions of the regulations. This  
24 does not -- over 30 pages not including attachments, which  
25 will be provided to you later today.

1           We were really quite disappointed that there was  
2 no time extension granted. The Department has had two years  
3 to develop these regulations and there was never a public  
4 workshop, there was never an opportunity for discussion. It  
5 was just simply noticed a couple of months ago with  
6 widespread requests from a number of parties asking for more  
7 time to evaluate this, probably the most extensive  
8 regulatory package the Department has put forth in over 20  
9 years.

10           We were really offended by the description of the  
11 hazardous waste industry as being a niche industry as  
12 described in the Statement of Reasons. As Randy pointed  
13 out -- Mr. Friedman indicated that virtually every resident  
14 and business and industry in California generates hazardous  
15 wastes that need to be safely and securely managed, and to  
16 dismiss this as a niche industry is patently absurd.

17           We were really concerned about the inadequate  
18 discussion of the financial burden on in-state facilities.  
19 We will be providing you an economic analysis on the impact  
20 on disposal. As you probably are hopefully already aware,  
21 there is quite a bit of disparity between how you manage  
22 California-generated hazardous waste in California versus  
23 those in adjacent states. Many adjacent states don't even  
24 regulate California-only non-RCRA hazardous waste as a  
25 hazardous waste. That can go into normal solid waste

1 landfills in many adjacent states with far less regulatory  
2 controls that are imposed on California hazardous waste  
3 facilities.

4           Approximately 80 to 90 percent of the waste that  
5 comes into Kettleman Hills every year is a non-RCRA  
6 California-only hazardous waste and it has been declining  
7 dramatically over the past several years. We currently  
8 estimate that about 50 percent of the hazardous waste  
9 generated in California is being exported to other states.  
10 This is going to continue and expand even further, which  
11 leads to the question as how can you dismiss this as not  
12 having a significant environmental impact?

13           We will provide extensive comments on the fact  
14 that a full-blown EIR must be prepared on these regulations  
15 in order to comply with California law. And the reasons for  
16 it is because of the exports, the greenhouse gas emissions  
17 and facilities having to shut down or reduce their operation  
18 significantly to provide services to California hazardous  
19 waste generators.

20           And in fact this rulemaking is five separate  
21 rulemakings that really should have been broken down into  
22 five separate different packages, each with the benefit of  
23 45 day public comment and preferably with a public discourse  
24 in workshops prior to this happening. A perfect example is  
25 the Violation Scoring Procedure. I am not going to go into



1 great detail but this really causes significant problems.  
2 We can't imagine anybody settling a Class I or probably even  
3 a Class II violation ever again. We are going to have to  
4 fight those tooth and nail because it goes on the record and  
5 it goes on the record without any due process, which is not  
6 at all discussed in the provision.

7           So we have many more comments about the VSP but I  
8 am not going to go into them now.

9           The financial assurance changes ignore the real  
10 problem, which has been the lack of regulatory oversight by  
11 DTSC and other agencies on the existing financial assurance  
12 mechanisms.

13           There is an unnamed battery facility that had  
14 significant problems with financial assurance but it was  
15 because the mechanisms were under-funded, not because it  
16 didn't work.

17           (A tone sounded.)

18           MR. WHITE: I'm wrapping up here.

19           The two mechanisms that these regulations target  
20 are captive insurance and the financial test. The  
21 Department has not given any evidence there is a problem  
22 with those, any history of a problem, yet there have been  
23 known problems of virtually all the other financial  
24 assurance mechanisms. You don't give any reasons for  
25 picking these two mechanisms for scrutiny and increased

1 regulatory control if not outright elimination. These are  
2 the two financial assurance mechanisms that have the most  
3 stellar track record in California and throughout the United  
4 States.

5 HEARING OFFICER GHAZI: Chuck, I need you to wrap  
6 up.

7 MR. WHITE: I'm wrapping up.

8 The community profile we believe is unworkable,  
9 its requirements for us to represent how the community feels  
10 about our facilities. We're setting up for failure. No  
11 matter what we say the communities are likely to find a  
12 reason that we didn't get it right.

13 And we also have about 20 comments on the health  
14 risk assessment and how it's not appropriate as well as with  
15 training requirements.

16 All I can say is that we are going to provide  
17 extensive documentation, both technical and legal, on how  
18 these regulations cannot be adopted by the Department going  
19 forward as in doing so we would be in violation of state  
20 law. Thank you.

21 HEARING OFFICER GHAZI: Thank you, Chuck.

22 The next speaker is Janet Whittick.

23 MS. WHITTICK: Good morning. I'm Janet Whittick,  
24 W-H-I-T-T-I-C-K, and today I am here on behalf of the  
25 California Council for Environmental and Economic Balance,

1 CCEB. We also have submitted written comments today, both  
2 here in person and via email.

3 We appreciate the opportunity to comment and we  
4 are grateful for the time staff has taken to discuss the  
5 proposal with us. Unfortunately, we too have identified a  
6 number of concerns with the proposed regulation. My  
7 comments now will speak to a few of them, but again, we  
8 provided more detail in the written comments. As much as  
9 possible we have tried to identify potential solutions and  
10 we hope to work with staff to resolve our issues.

11 Our key concern here is the process in that there  
12 were no public workshops on the regulation. While there  
13 were two symposia held, the focus of those were much more on  
14 the Track 2 work as opposed to the regulations that we have  
15 before us today. So we do request that DTSC hold a workshop  
16 before finalizing the final rule package in order to allow  
17 for the needed public discussion and for stakeholders to  
18 raise clarifying questions.

19 In terms of applicability we are concerned about  
20 the lack of clarity regarding who is subject to the  
21 regulation. Although characterized as applying only to  
22 hazardous waste treatment, storage and disposal facilities,  
23 we are concerned that the regulation could go beyond this  
24 and also apply to generators and post-closure permitted  
25 facilities.

1           In regards to the training requirements, we  
2 support the online training for facility personnel and feel  
3 this is a relevant and practical change which many would  
4 welcome. However, the section also requires facility  
5 personnel to complete a training program. We are concerned  
6 that there is a lack of clarity regarding the scope of who  
7 the personnel would be who would be required to participate  
8 in the training and we also have questions about whether  
9 generators in post-closure facilities would be subject to  
10 the training requirements. If so, we believe that that  
11 would be inappropriate and excessive.

12           In terms of the financial assurance rules, we  
13 repeat our past concerns about the Department's approach  
14 when this was first raised in 2009. Our concern is that  
15 these requirements will have a negative effect on the  
16 availability and cost of insurance.

17           On health risk assessments we ask staff to allow  
18 60 days for providing supplemental information rather than  
19 just 30 and we also ask for clarification regarding the  
20 three tiers. It is not clear what the differences among  
21 these are and we are very concerned about the time line for  
22 resubmitting information.

23           With regard to the inspection violation score we  
24 ask that facilities be given the opportunity to challenge  
25 scores put forth prior to the regulation going into effect.

1           And finally, we ask the Department to provide  
2 criteria for what would be required as facilities  
3 improvements under Section 66271.57(b)(2). We feel that  
4 such actions should be based on proactive discussions with  
5 the facility operator to ensure that the requirements are  
6 effective, sufficient and cost-conscious. Thank you.

7           HEARING OFFICER GHAZI: Thank you, Janet.

8           The next speaker is Tom, Mr. Tom Jacob.

9           MR. JACOB: Thank you. Tom Jacob on behalf of the  
10 Chemical Industry Council of California. Our members  
11 include waste generators and permittees of various kind but  
12 we do not represent the primary waste handling in  
13 California. We are a signatory to an industry coalition  
14 letter which I believe will be spoken to this morning and  
15 will be submitted this afternoon.

16           We would like to emphasize our overall reaction to  
17 the proposals that are reflected in this document. We see  
18 these proposals as impacting a much broader swath of  
19 industry than the primary waste handlers that are its  
20 primary object. We think all stakeholders in this economy  
21 have a stake in the proposal because a functional system for  
22 managing hazardous waste is essential. Our economy cannot  
23 function without that.

24           DTSC has a primary responsibility in ensuring such  
25 a functional system is operative and benefitting the economy

1 of the state of California. We have a grave concern that  
2 the haste with which this package is being reviewed, the  
3 economic findings of this package and the call for a CEQA  
4 exemption within this package all seem to systematically  
5 under-attend to this responsibility. DTSC does have  
6 responsibility here and an obligation to ensure that it is  
7 fully discussed with and among all stakeholders in this  
8 economy.

9           So we would urge and reinforce the calls that have  
10 already been made for much greater dialogue on this before  
11 it's finalized. Thank you.

12           HEARING OFFICER GHAZI: Thank you, Mr. Jacob.

13           The next person is Ms. Louinda Lacey.

14           MS. LACEY: Good morning, Louinda Lacey, L-O-U-I-  
15 N-D-A, last name L-A-C-E-Y, with the California Chamber of  
16 Commerce. Thank you for the opportunity to speak on this  
17 regulatory package.

18           At first I will say that five minutes simply is  
19 not enough to address this package and so what I will do is  
20 address the high-level issues relating to this package with  
21 specific comments to follow this afternoon.

22           One of the things that we need to acknowledge, as  
23 has been presented, is that Californians generate hazardous  
24 waste. And if we cannot treat and dispose of our hazardous  
25 waste within California it will go elsewhere. And that is

1 something to keep in mind because there is a downward trend  
2 in terms of the hazardous waste facilities in California.

3 For example, when Maureen Gorsen became Director  
4 of DTSC in 2006 there were 137 permitted facilities. When  
5 Debbie Raphael became Director the number had decreased to  
6 123 permitted facilities. The number of permitted  
7 facilities continued to decrease thereafter to 117 in 2013;  
8 and when I just pulled the number off EnviroStor on October  
9 24th there were 109 permitted facilities.

10 And I will echo what the Department of Defense has  
11 said that we believe there is a direct correlation between  
12 the decline in the number of facilities and the increased  
13 costs and requirements being placed on these facilities  
14 without due consideration for whether or not those increased  
15 costs and requirements would actually benefit Californians,  
16 and that is something that I believe needs to be analyzed in  
17 great detail.

18 For that reason as well be believe that the  
19 economic impact analysis is patently deficient. Not only  
20 are the hourly rates not supported, they are used  
21 inconsistently, and we are aware that different hourly rates  
22 are being charged right now under the cost for service that  
23 is being charged to facilities; there is also no evidence in  
24 the record to support the number of hours that are being  
25 used to calculate the economic impact facilities.

1           And further we believe that given this downward  
2 trend in permitted facilities and these increased costs more  
3 facilities will close, which again as has been stated, will  
4 have an environmental impact on Californians, not only with  
5 regards to the trucks and the greenhouse gases being  
6 generated to dispose of those hazardous wastes but also with  
7 regards to -- imagine if we do not have oil recycling  
8 facilities in California. How will Californians deal with  
9 that hazardous waste?

10           One of the things that we want to ensure is that  
11 we do not have communities that are unfairly impacted by the  
12 disposal of hazardous waste in those communities. It is  
13 very important that we have our own hazardous waste  
14 facilities in California. And with this proposal we believe  
15 that it will just simply increase the costs of doing exactly  
16 that in California and therefore there will be additional  
17 permitted facilities that will close, so I do believe that  
18 is very important.

19           A general statement as well and we outline this in  
20 our comments. With that I do want to just say that there  
21 will be substantial comments on this. I will echo, we  
22 personally requested an extension of time to comment on this  
23 given the broad scope of these regulations.

24           But I will also ask that DTSC please give due  
25 consideration to the substantial volume of comments that



1 they will receive on this regulatory package because it is  
2 very important.

3           And as we outline in that regulatory package,  
4 there simply is no evidence in the record whatsoever to  
5 support the proposed regulations, the assumptions or the  
6 findings being made. I will echo others' requests that we  
7 have additional either workshops or scoping conferences or  
8 any other kind of public participation where we can really  
9 work through these regulations to make sure that we do not  
10 have unintended consequences, that we adequately address the  
11 concerns that are being raised and that we move forward as  
12 partners to ensure that we adequately treat our hazardous  
13 waste in California. Thank you.

14           HEARING OFFICER GHAZI: Thank you, Ms. Lacey.

15           The next speaker is Chris Mowrer.

16           MR. MOWRER: Thank you for the time and  
17 opportunity to comment. My name is Chris Mowrer, the last  
18 name is spelled M-O-W-R-E-R. I am here on behalf of Clean  
19 Harbors, which through its subsidiaries owns and operates  
20 numerous permitted hazardous waste management facilities in  
21 the state of California and is a major provider of  
22 commercial hazardous waste management services in the state.

23           Not to sound repetitive but obviously as you can  
24 tell through the themes from a number of the responses of  
25 the previous speakers there are some serious concerns that

1 really need to be repeated and hammered home with regards to  
2 the development of these proposed regulations.

3           One is, again, you know, with regards to a 45 day  
4 comment period. The fact that this bill was enacted, 673  
5 was enacted, signed by the Governor in 2015 and the  
6 Department had two years essentially to develop this  
7 regulatory package. The fact that we are here in the early  
8 part of November with a deadline of January 1st next year  
9 for the Department to adopt these regulations, very  
10 disappointed with regards to the amount of time and ability  
11 for the regulated community to have substantive dialogue  
12 with the Department with regards to the real world impacts  
13 of these proposed regulations.

14           Again, I would also concur with the previous  
15 speakers. We would like to see some more workshops, some  
16 opening up further of the regulatory process. We need to  
17 have continued dialogue with regards to these proposed draft  
18 regulations.

19           There are some serious consequences that have not  
20 been adequately, in our view, analyzed, assessed; and quite  
21 frankly, the lack of evidence provided in the Initial  
22 Statement of Reasons or any of the attached documents from  
23 the Department with regards to the assertions that the  
24 Department makes with regards to potential folks or  
25 facilities that could be impacted by these regulations,

1 actions that are assumed or asserted by the Department that  
2 will or will not occur as a result of those regulations.

3 The costs that are associated with, not only with  
4 regards to the facilities to comply with these regulations  
5 but also the costs that are associated with the Department  
6 with regards to complying with these regulations as well.

7 In a nutshell it just seems that this regulatory  
8 package just seems to be ramrodding through towards the end  
9 of the year without a real adequate chance for folks to sit  
10 down and have a real discussion and have a better idea and  
11 understanding in terms of where the Department is coming  
12 from with this package. As well as the Department spending  
13 some more time with regards to these permitted facilities in  
14 California to better understand how these facilities operate  
15 in a highly regulated environment here in the state.

16 And our fear is, again, if this package goes  
17 forward with minimal changes, and there are some significant  
18 changes that need to occur in this package, we are just  
19 going to see a diminished amount of permitted facilities in  
20 the state. As the previous speaker said, we've got -- the  
21 package recognized that there was 113 permitted facilities.  
22 This was a package that was dated in September of this year.  
23 You used the number 113 permitted facilities. There's 109  
24 facilities that are now, according to EnviroStar, that are  
25 permitted to operate in California. The 110th facility was

1 one of our facilities that Safety-Kleen Clean Harbors had to  
2 shut down due to the fact that it was just not economically  
3 viable to continue to operate in the state of California  
4 anymore.

5 And as these facilities continue to decrease in  
6 the number of facilities that we have in California where is  
7 that waste going to go? What are we going to do? How are  
8 we going to manage the waste that is being, you know. We've  
9 got what, 39.3 million Californians in California that  
10 are -- that are -- that are -- that are contributing to  
11 hazardous waste in California. And if that waste gets  
12 shipped outside of California those have real environmental  
13 consequences and impacts. That's why you need --

14 This idea that there is an exemption from CEQA  
15 with regards to these regulations, that's ludicrous. And  
16 quite frankly, the assumptions that have been put forward so  
17 far to justify that, it's lacking. It's lacking in rigor,  
18 it's lacking in candor and quite frankly it's beneath this  
19 department in terms of putting something like that out.  
20 Thank you.

21 HEARING OFFICER GHAZI: Thank you, Mr. Mowrer.

22 The next speaker is Bradley Angel.

23 MR. ANGEL: Good morning. My name is Bradley  
24 Angel and I am the Executive Director of Green Action for  
25 Health and Environmental Justice. Our organization was

1   founded --

2                   HEARING OFFICER GHAZI:   Would you please spell  
3   your last name for us?

4                   MR. ANGEL:   A-N-G-E-L.

5                   Our organization was founded 20 years ago, not by  
6   the management of toxic waste companies that want business  
7   as usual to continue dumping on low-income and communities  
8   of color, not by these polluters who think it's okay that  
9   100 percent of hazardous waste disposal in the state of  
10  California happens in Latino, Spanish-speaking farmworker  
11  communities.  Our organization was founded by people from  
12  Kettleman City and from other low-income communities of  
13  color on the front lines of getting dumped on and polluted  
14  courtesy of a lot of dirty industries, and quite honestly,  
15  the state of California.

16                  It was interesting when I came in.  The first  
17  thing I noticed is other than Maricela who will be coming up  
18  to speak, I believe she is the only person from a community,  
19  at least from the hazardous waste landfill communities, all  
20  three of which are in Spanish-speaking farmworker  
21  communities, including two of those run by so-called Clean  
22  Harbors.

23                  The one thing I agree with the guy from so-called  
24  Clean Harbors is that there should be meetings in the  
25  affected communities.  And the suggestion I make is I hope

1 Clean Harbors will agree, since they want this whole thing  
2 pushed back and stalled, don't move forward with your permit  
3 application to start full operations again in Westmorland.  
4 Because I think what is going on is they want to try to get  
5 their new permits before these rules come into effect.

6           So the bottom line is, you know, this is a really  
7 important issue and we hope it does change business as  
8 usual.

9           We do have some concerns about what we've seen.  
10 We're concerned, actually, that DTSC is not going to be  
11 complying with the legislative time line mandated by SB 673  
12 nor are you complying with the court-enforceable time line  
13 of the Title VI civil rights settlement DTSC and CalEPA  
14 reached with Green Action and El Pueblo of Kettleman City,  
15 so that's one problem.

16           In terms of some of the permitting criteria, for  
17 example in terms of scoring violations. One of the problems  
18 is, which is great for the toxic waste companies is, it's a  
19 rare day when DTSC actually says a violation is serious.  
20 Not that many years ago Chem Waste in Kettleman City was  
21 caught by DTSC during an inspection, which was good that you  
22 all caught it, and they found a log that showed that there  
23 had been, I believe it was 73, I could have the number wrong  
24 but I think it was 73 unreported spills. The DTSC lawyers  
25 were up in arms, this is terrible, this is serious, Chem

1 Waste knew they were supposed to report them.

2 Well what do you know. When it came -- because  
3 that would have, if you had stuck to that, that kind of  
4 would have been a problem issuing a new permit to expand to  
5 Chem Waste. So all of a sudden these 73 violations, if  
6 that's not chronic I don't know what is - based on DTSC's  
7 own lawyers who were sure it was serious - all of a sudden,  
8 oh, it's no big deal, they were small spills. DTSC had no  
9 idea whatsoever if they were big or small and they admitted  
10 that when we asked them, "How did you know they were small  
11 since you never knew about them anyhow, they weren't  
12 reported?" "Well, that's what Chem Waste told us." So if  
13 that's DTSC's idea of scoring, we have no faith in it.

14 What we want to see in permitting criteria is the  
15 laws of the state of California and the United States of  
16 America actually used in permitting. And the specific laws  
17 we're talking about includes California Government Code  
18 11135, the state's civil rights law, and Title VI of the  
19 United States Civil Rights Act of 1964 and its implementing  
20 regulations. And what those laws mean is DTSC knows very  
21 well, since DTSC's Director and CalEPA's Director had to  
22 sign on the dotted line in the civil rights settlement.  
23 DTSC is required to not just comply with civil rights laws,  
24 including language access laws, but to refrain from taking  
25 actions - because you receive state and federal funding -

1 refrain from taking actions that have a disparate,  
2 disproportionate negative impact on people of color and non-  
3 English speakers.

4           So guess what? That means you can't pretend that  
5 serious violations are small violations. That means when  
6 Clean Harbors wants to or Chem Waste wants to use 26 year  
7 old English-only EIRs --

8           (A tone sounded.)

9           MR. ANGEL: I'm going to finish my time, by the  
10 way. When they want to use 26 year old English-only EIRs  
11 and they don't want to be accountable, that party is over.  
12 We want to see meaningful public participation, not a room  
13 filled with lobbyists and toxic waste companies. We want to  
14 see a room filled with the people most affected. We want to  
15 see people -- I'm going to finish here. We want to see  
16 people have the ability to participate in a process where  
17 they can actually read the documents. But if it's up to  
18 these toxic waste companies and the state up until now, that  
19 would never happen.

20           So we need, you know, we need real cumulative  
21 impact analysis. Where is the information you are supposed  
22 to be providing under SB 673 under considering cumulative  
23 impacts? I haven't seen it and it appears to be delayed.

24           So the bottom line is this agency needs to start  
25 doing its job. Don't be intimidated by the big money toxic



1 waste companies and start putting your actions and your  
2 decisions where your mouth is, which is meaningful civic  
3 engagement, language access, civil rights compliance and  
4 environmental justice for all, not just big money in the  
5 bank for Clean Harbors and Waste Management. Thank you.

6 HEARING OFFICER GHAZI: Thank you, Mr. Angel.

7 The next speaker is Ms. Maricela Mares-Alatorre.

8 MS. MARES-ALATORRE: Good morning. I drove this  
9 morning from Kettleman City because I thought it was  
10 important to come to this meeting and speak out for  
11 communities like mine.

12 I got in in time to hear Mr. Clean Harbors say,  
13 you know, that wonderful refrain about how noble it is not  
14 to send our hazardous waste out of the state. As someone  
15 who lives in one of the affected communities, I don't give a  
16 damn where you send it as long as it's far away from me.  
17 Because the truth is it's so noble to say, oh, we can't send  
18 our waste out, that's so bad, but you're shipping it to  
19 three very, very vulnerable communities, the three most  
20 vulnerable communities in the state. So until you can fix  
21 that part I really don't care how much they care about what  
22 they're doing to other states; and I'm sorry if that sounds  
23 horrible to other states.

24 I have relatives in other states, I do care about  
25 them, but it just seems like you're over-burdening the same

1 communities over and over again and permitting criteria  
2 should take that into account. Especially when you have  
3 facilities that are constantly caught violating the terms of  
4 their permits. That should be a no-brainer that you don't  
5 give them more permits. So that should be taken into  
6 account when coming up with new criteria for permitting.

7           You know, Bradley before me mentioned the civil  
8 rights agreement and People for Clean Air & Water of  
9 Kettleman City is very proud to have been a part of that.  
10 Unfortunately, it seems that there is always a loophole to  
11 get past those pesky laws that are trying to protect  
12 vulnerable communities.

13           So I just, you know, it was important to me to be  
14 here and to say that the criteria should be fair to  
15 communities and not always swayed towards polluters. Do  
16 your job, apply laws fairly, follow the laws that are  
17 already on the books, that would be, you know, a very good  
18 start, and be fair to communities that have to bear the  
19 burden of the whole state's toxic waste. Thank you.

20           HEARING OFFICER GHAZI: Thank you, Ms. Alatorre.

21           Are there any other commentators?

22           Good morning, Ingrid.

23           MS. BROSTROM: Good morning. I wanted to bring up  
24 three main points. My name is Ingrid Brostrom with the  
25 Center on Race, Poverty & the Environment.

1           At the outset I want to say that as one of the  
2 primary sponsors of SB 673 I was extremely, extremely  
3 disappointed in the regs that came out, for a number of  
4 reasons. But I want to say first and foremost the violation  
5 scoring procedure, which I think had showed promise in terms  
6 of the concept, how it's been drafted reduces protections to  
7 public health and communities living next to these  
8 facilities and there's a couple of specific points why that  
9 is.

10           First and foremost, allowing for an averaging over  
11 a 10 year period basically erases the cumulative impact of  
12 chronic violations and it erases the ability of the  
13 Department to identify chronic violators. If you do the  
14 math, because if you are in an unacceptable facility  
15 quote/unquote, your score is over 40. When you look at the  
16 criteria in the matrix, in order to get a score of 40 you  
17 would have to have two serious Class I violations for every  
18 single inspection over a 10 year period. There is never in  
19 the history of DTSC a facility that has been that non-  
20 compliant, so the VSP already is impossible to meet any  
21 criteria that would actually result in any DTSC action.

22           Even if there was a facility that would meet that  
23 extremely high standard, still DTSC has made it virtually  
24 impossible to hold even those violators accountable because  
25 it retains the discretion, even if there was a unacceptable

1 facility, to continue with the permitting. It sets up a  
2 separate appeals process, only accessible to the project  
3 applicant, that is separate from the existing permit appeal  
4 process, which is open of course to any party, and then  
5 shifts the burden, the normal burden of the appeals process  
6 to DTSC rather than the project applicants. So it is pretty  
7 apparent to me that the industry that you are meant to  
8 regulate drafted this provision of these regulations.

9 I also was disappointed in the financial assurance  
10 piece. Of course there's already been a lot of analysis  
11 done, including a report by the Legislative Analyst that  
12 looked exactly at this issue and it came up with a set of  
13 recommendations recognizing that DTSC's existing financial  
14 assurance program was resulting in the state paying a  
15 considerable amount of costs and taking on a considerable  
16 amount of risk that the facilities would be unable to meet  
17 their financial obligations both post-closure and for  
18 corrective actions.

19 DTSC did not take a single recommendation from the  
20 Legislative Analyst's report. These recommendations  
21 included limiting a company's ability to use the financial  
22 test, recognizing that in the case of insolvency the burden  
23 shifts entirely to the state. It also identified the  
24 insurance as being subject to negotiating down the actual  
25 cost of remediation.

1           It suggested that DTSC can collect financial  
2 assurances for corrective actions early in the process, as  
3 CRPE has long advocated for, recognizing that the Water  
4 Boards do exactly that at the outset, not waiting until  
5 there has been a massive release in order to start  
6 collecting costs. Again, this poses a considerable risk to  
7 the state in terms of having to cover the costs. And we  
8 don't have to look very far --

9           (A tone sounded.)

10           MS. BROSTROM: -- to figure out that this is a  
11 real problem. We need only look at Exide and realize that  
12 the state is now on the hook for the largest hazardous waste  
13 cleanup in the history of this state.

14           HEARING OFFICER GHAZI: Please wrap it up,  
15 Ms. Brostrom.

16           MS. BROSTROM: That's it. Thank you.

17           HEARING OFFICER GHAZI: Thank you so much.  
18 Are there any other commentators?

19           (No response.)

20           HEARING OFFICER GHAZI: For those that want to  
21 come back up again we could allot more time.

22           (No response.)

23           HEARING OFFICER GHAZI: So we will be here until  
24 11:30. We had designed this comment hearing to last through  
25 11:30.

1 MS. BROSTROM: I didn't realize we'd have a second  
2 shot at the apple here.

3 HEARING OFFICER GHAZI: One moment, Ingrid. I  
4 just want to give the previous speakers a chance first.

5 Bear with us for a second.

6 I do have a comment through the website; I will  
7 read it. This is from Cynthia Babich:

8 "Thank you for these needed changes to the  
9 regulations. You must look at the air emissions  
10 as part of the scoring for major violations to be  
11 protective of environmental justice communities.  
12 Please include. Cynthia."

13 Okay, Ingrid. We'll give you five more minutes,  
14 Ingrid.

15 MS. BROSTROM: I won't need that much.

16 I wanted to make my third and final point though,  
17 which is, SB 673, of course, had seven different criteria  
18 that the Department was required to look at and consider in  
19 updating these regulations. DTSC I guess interpreted this  
20 language as discretionary; it is not. DTSC's failure to  
21 look at community vulnerability and setback distances was  
22 not a discretionary act.

23 DTSC will fail to meet the mandatory deadline  
24 included in SB 673, and like so many other mandates that  
25 DTSC must comply with, DTSC again has failed to take its

1 statutory mandate seriously. I know DTSC has stated that it  
2 will consider these two criteria at a later point but quite  
3 simply the legislative mandates are not guidance documents,  
4 they're mandatory, and this is a violation of the law. So I  
5 wanted to put that on the record. That's it.

6 HEARING OFFICER GHAZI: Thank you, Ms. Brostrom.

7 So we have no other commentators so we'll -- the  
8 hearing will remain open until 11:30 so if you have any  
9 comments let me know.

10 (Off the record.)

11 HEARING OFFICER GHAZI: The time is 11:30,  
12 November 6, 2017. We are closing the hearing with no  
13 comments received after the 10:50 comment, the last comment  
14 at 10:50. Thank you very much.

15 (Thereupon, the public hearing of the  
16 Department of Toxic Substances Control was  
17 closed at 11:30 a.m.)

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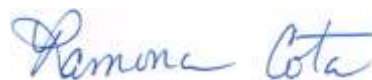
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## CERTIFICATE OF REPORTER

I, RAMONA COTA, a Certified Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I transcribed the foregoing prerecorded video file of a Public Hearing for Proposed Regulations for Hazardous Waste Facility Permit Criteria to the best of my ability.

I further certify that I am not of counsel or attorney for any of the parties to said action, or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of November, 2017



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